IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 3782 of 1996

For Approval and Signature:

HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

SHARDABEN W/O RAMESHBHAI M PATNI & 1 - Appellant(s)
Versus
BABULAL S RATHOD & 1 - Defendant(s)

==========

Appearance :
NOTICE SERVED for Appellant(s) : 1 - 2.MR PARESH M DARJI for Appellant(s) : 1 - 2.
NOTICE UNSERVED for Defendant(s) : 1,
MS MEENU KUMAR for MR MG NAGARKAR for Defendant(s) : 2,

==========

CORAM : HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

Date : 17/01/2007

ORAL JUDGMENT

1. This matter was called out on 16th January, 2007 and it was partly heard and to enable the learned advocates to tally their calculations it was kept today

as part heard matter. When the appeal is called out, the learned advocate for the appellants is not present. Ms. Meenu Kumar learned advocate for Mr. M.G. Nagarkar learned advocate for the respondents is present and she has made her submissions.

2. The original claimants have preferred this appeal to seek enhancement of the compensation granted by MACT No. III [Main] Court No. 13, Ahmedabad in MACP No. 126 of 1986 by judgment and award dated 18th October, 1988. The Tribunal has awarded a sum of Rs.23,920=00 by way of compensation to the appellants for the death of their son aged four years in a vehicular accident that took place on 24th November, 1985. The amount has been awarded together with interest at the rate of 9% per annum from the date of application till realization and proportionate costs.

3. The appellants preferred the petition under the Motor Vehicles Act, 1939 to claim compensation since their son Sunil aged about four years died due to rash and negligent driving of respondent no. 1. The deceased was walking with his grandfather. He was knocked down from behind by respondent no. 1 who drove the bus belonging to respondent no. 2 bearing registration no.

GRU 8539 on route no. 112 in the city of Ahmedabad. The appellants claimed Rs.50,000=00 by way of compensation.

4. Before the Tribunal the parties led oral as well as documentary evidence. On the basis of the material produced before it, the Tribunal arrived at a conclusion that the accident took place solely due to negligence of respondent no. 1. It also assessed the compensation payable to the appellants at Rs.23,920=00. Hence, feeling aggrieved by inadequacy of the compensation, the appellants have preferred this appeal.

5. I have heard Ms. Kumar learned advocate for the respondents. She has drawn my attention to the obvious error of calculation made by the Tribunal which has resulted into wrong computation of the amount under the head of loss of dependency benefit. She has drawn my attention to paragraph 14 of the judgment. It shows that the Tribunal has determined the monthly income of the deceased child at Rs.600=00. It has thereafter deducted a sum of Rs.100=00 which the deceased would have used as personal expenses. Since the appellants are the parents of a unmarried boy, the Tribunal has held that they would be entitled to receive one-third of Rs.500=00 as dependency benefit. The Tribunal at this juncture has

committed error in calculation. The Tribunal has calculated one-third of Rs.500=00 at Rs.55=00 and has held that that would be the loss to the appellants per month and the annual loss of Rs.660=00. The Tribunal thereafter has applied multiplier of 17 and has held that the appellants would be entitled to receive Rs.11,220=00 towards the loss of dependency benefit. This is an obvious error since one third of Rs.500=00 would be Rs.167=00 and that would be loss per month to the appellants. The annual loss therefore would be Rs.2004. The same if multiplied by 17 i.e., the purchase, it would bring the amount to Rs.34,068=00 towards the loss of dependency benefit. If Rs.11,220=00 which has already been awarded is deducted, the appellants would be entitled to receive Rs.22,848=00 as an additional amount for loss of dependency benefit. Further the Tribunal has awarded a sum of Rs.700=00 to the appellants for loss of their actual income since, according to the Tribunal for month or so they would not have been in a position to do the work and earn the income. The appellants have claimed Rs.1,400=00 under that head. Considering the fact that the parents would not have been in proper frame of mind for a considerable period on account of loss of their child, they would not have been able to carry on the business and they would have suffered economic loss.

Thus, judging by standards of those days, the monthly loss of Rs.1,400=00 under the head of actual loss of income on that count would be reasonable and in my opinion, the Tribunal ought to have awarded Rs.1,400=00 under the head of actual loss of income. It has awarded Rs.700=00. Therefore, the appellants are entitled to receive Rs.700=00 as additional compensation on that count. In this appeal, they have also prayed for Rs.10,000=00 for pain, shock and suffering. This claim was not made before the Tribunal. In view of the same, and also in view of the fact that there is no evidence that they had witnessed the incident and had suffered mental trauma, this amount cannot be awarded. It also appears that in this appeal they have prayed for additional 3% on rate of interest i.e., interest at the rate of 12%. However, there is no material to show that at the relevant time the prevailing rate of interest was 12%. Hence except the amount as stated above, in my opinion, the appellants do not deserve to have any additional compensation or interest. Ms. Kumar has submitted that since the additional amount is required to be awarded solely due to error committed by the Tribunal in calculation, respondent no. 2 may not be saddled with the liability of paying interest thereon from the date of the judgment of the Tribunal till the disposal of this

petition. There is some substance in the submission of Ms. Kumar. Obviously it is the Tribunal's error which has resulted into grant of additional amount in this appeal. In fact, the additional amount is on the basis of the income determined by the Tribunal and no increase is made therein. Therefore, the appellants would be entitled to receive interest on the additional amount granted by this Court for the period commencing from date of filing of the application till the judgment of the Tribunal and thereafter from the date of the judgment of this Court till realization.

6. In the result, the appeal is partly allowed.

R & P to be re-transmitted to the Tribunal forthwith.

[Akshay H. Mehta, J.]

/phalguni/